A

YAB DATO' DR ZAMBRY ABD KADIR & ORS

v.

YB SIVAKUMAR VARATHARAJU NAIDU; ATTORNEY-GENERAL MALAYSIA (INTERVENER)

B

FEDERAL COURT, PUTRAJAYA
ALAUDDIN MOHD SHERIFF PCA
ARIFIN ZAKARIA CJ (MALAYA)
NIK HASHIM FCJ
C AUGUSTINE PAUL FCJ
ZULKEFLI MAKINUDDIN FCJ
[NOTICE OF MOTION NO: 06-04-2009 (A)]
3 JUNE 2009

D ***CONSTITUTIONAL LAW:*** *Legislature - State Assembly - Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly - True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 - Commencement*
E *of action - Justiciability of orders sought - Whether applicants' suspension on account of alleged contempt null and void – Federal Constitution, art. 72(1)*

CONSTITUTIONAL LAW: *Legislature - State legislative powers -*
F *Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly - True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 - Commencement of action – Justiciability of orders sought - Whether applicants' suspension*
G *on account of alleged contempt null and void - Federal Constitution, art. 72(1)*

CONSTITUTIONAL LAW: *Legislature - Contempt - Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly - True interpretation of art. XLIV Perak State*
H *Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 - Commencement of action - Justiciability of orders sought - Whether applicants' suspension on account of alleged contempt null and void - Federal Constitution, art. 72(1)*

I

CONSTITUTIONAL LAW: *Constitution - Perak - Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly - True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 - Commencement of action - Justiciability of orders sought - Whether applicants' suspension on account of alleged contempt null and void - Federal Constitution, art. 72(1)*

STATUTORY INTERPRETATION: *Construction of statutes - Literal approach - Decision of Speaker suspending and prohibiting applicants from attending State Legislative Assembly - True interpretation of art. XLIV Perak State Constitution read together with Standing Orders of Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 - Whether applicants' suspension on account of alleged contempt null and void*

CIVIL PROCEDURE: *Action - Commencement - Mode of commencement - Declaratory relief - Declaration of applicants' legal right - Appropriate form of relief - Rules of the High Court 1980, O. 15 r. 16, O. 53 - Specific Relief Act 1950, s. 41*

CIVIL PROCEDURE: *Declaratory relief - Declarations of right - Mode of commencement of action - Declaration of applicants' legal right - Appropriate form of relief - Rules of the High Court 1980, O. 15 r. 16, O. 53 - Specific Relief Act 1950, s. 41*

The first applicant was sworn in before His Royal Highness the Sultan of Perak as the Menteri Besar of Perak on 6 February 2009, while the second to seventh applicants were sworn in as State Executive Councillors of Perak on 10 February 2009. By a letter dated 11 February 2009, the Assemblyman from Taman Canning complained to the respondent, the Speaker of the State Legislative Assembly of Perak, that the applicants had committed acts of contempt of the State Legislative Assembly. The respondent subsequently issued summonses pursuant to Standing Order 72 of the Standing Orders of the State Assembly of Perak containing the alleged breaches of privilege and a direction against the applicants to attend before the Committee of Privileges ('Committee') on 18 February 2009. The applicants appeared at the appointed time and place as stated in the summons under protest and read out a written objection to the Committee stating that they did not recognise or submit to the jurisdiction of the

A Committee. On 19 February 2009 the first applicant was served with a letter dated 18 February 2009 stating that the respondent had found him guilty as charged and, in exercising his powers as Speaker, suspended him from attending sessions of the State Legislative Assembly for a period of 18 months. On the same day
B the second to seventh applicants were also served with letters dated 18 February 2009 stating that the respondent had found them guilty as charged and had suspended them from attending sessions of the State Legislative Assembly for a period of 12 months. The applicants filed an originating summons in the High
C Court seeking, *inter alia*, a declaration that the respondent's decision suspending and prohibiting the applicants from attending sessions of the State Legislative Assembly was against the laws of the Constitution of Perak and was accordingly null and void. The applicants then filed a Notice of Motion in the Federal Court for
D certain questions to be answered pursuant to art. 63 of the Constitution of Perak. The main issue requiring determination before this court was whether on a true interpretation of art. XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and Legislative
E Assembly (Privileges) Enactment 1959 and/or all relevant laws, the respondent's decision was *ultra vires* and, therefore, null and void. The respondent submitted that the issues raised by the applicants were not justiciable and, in support, relied on art. 72(1) of the Federal Constitution ('art. 72(1)) and the Legislative Assembly
F (Privileges) Enactment 1959 of Perak. The respondent also raised an objection that since he had been sued in his capacity as Speaker, the action ought to have been commenced under O. 53 of the Rules of the High Court 1980 ('RHC').

G **Held (for the applicants)**
Per Augustine Paul FCJ delivering the judgment of the court:

(1) Clearly the challenge of the applicants to their suspensions
H from the Legislative Assembly was a matter that affected their legal status within the meaning of s. 41 of the Specific Relief Act 1950 ('Act'). They were therefore entitled to seek a declaration of their legal right pursuant to O. 15 r. 16 of the RHC. It could not be argued that they ought to have
I proceeded under O. 53 of the RHC itself for declaratory relief for two reasons. Firstly, O. 53 of the RHC does not say it is

the exclusive provision for the grant of declaratory relief as stated by Lord Diplock in *O'Reilly v. Mackman*. Secondly, when the Act was enacted O. 53 of the RHC was not in existence and, thus, adherence to it could not have been contemplated. Be that as it may, and in any event, in cases of this nature the most appropriate form of relief is by way of declaration. Accordingly, the objection raised by the respondent was dismissed. (paras 23 & 24)

(2) In resolving the question of justiciability of the orders sought by the applicants the governing provision was art. 72(1), which must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the applicants were, hence, justiciable. (paras 27 & 28)

(3) Standing Order 72(1) authorises the Committee to take cognisance of "... any matter which appears to affect the powers and privileges of the Assembly ...". In order for a "... matter ..." to have such an effect it must be unlawful or be an infringement of the powers and privileges of the Assembly. It is only then that it can be said that it appears to affect the powers and privileges of the Assembly. The summonses against the applicants stated that their acts constituted contempt. As contempt had not been specifically prescribed for, the acts could not come within the ambit of Standing Order 72(1). Even the Legislative Assembly (Privileges) Enactment 1959 enacted by the Perak Legislative Assembly does not contain any provision for the offence of contempt and its punishment. By way of contrast, reference must be made to the House of Parliament (Privileges and Powers) Act 1952 which makes specific provision for contempt. The corollary is that art. XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and the Legislative Assembly (Privileges) Enactment 1959 do not provide for the offence of contempt and the resultant punishment of suspension from attending sessions of the State Legislative Assembly. In the upshot the applicants' suspension on account of the alleged contempt committed by them was null and void. (paras 32, 33 & 34)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Pemohon pertama telah mengangkat sumpah di hadapan Yang Amat Mulia Sultan Perak sebagai Menteri Besar Perak pada 6 Februari 2009, sementara pemohon-pemohon kedua hingga
B ketujuh telah mengangkat sumpah sebagai Ahli Eksekutif Negeri Perak pada 10 Februari 2009. Melalui satu surat bertarikh 11 Februari 2009, Ahli Dewan dari Taman Canning mengadu kepada responden, Speaker Dewan Undangan Negeri Perak, bahawa pemohon-pemohon telah melakukan perbuatan penghinaan
C terhadap Dewan Undangan Negeri. Responden kemudiannya mengeluarkan saman-saman melalui Peraturan Majlis Mesyuarat 72 Peraturan-peraturan Majlis Mesyuarat Dewan Undangan Perak yang mengandungi pemungkiran keistimewaan yang dikatakan dan suatu arahan terhadap pemohon-pemohon untuk hadir di depan
D Jawatankuasa Keistimewaan ('Jawatankuasa') pada 18 Februari 2009. Pemohon-pemohon hadir pada masa dan tempat yang ditentukan di dalam saman itu dengan bantahan dan membaca suatu bantahan bertulis kepada Jawatankuasa yang menyatakan bahawa mereka tidak mengakui atau menyerah kepada bidangkuasa
E Jawatankuasa. Pada 19 Februari 2009 pemohon pertama telah diberi satu surat bertarikh 18 Februari 2009 yang menyatakan bahawa responden telah mendapati beliau bersalah seperti yang dituduh dan, dalam melaksanakan kuasanya sebagai Speaker, menggantungnya dari menghadiri sesyen-sesyen Dewan Undangan
F Negeri untuk tempoh masa selama 18 bulan. Pada hari yang sama pemohon-pemohon kedua hingga ketujuh diberi surat-surat bertarikh 18 Februari 2009 yang menyatakan bahawa responden telah mendapati mereka bersalah seperti yang dituduh dan telah menggantung mereka dari menghadiri sesyen-sesyen Dewan
G Undangan Negeri untuk tempoh masa selama 12 bulan. Pemohon-pemohon memfail suatu saman permulaan dalam Mahkamah Tinggi bagi menuntut, antara lain, sesuatu deklarasi bahawa keputusan responden untuk menggantung dan melarang pemohon-pemohon dari menghadiri sesyen-sesyen Dewan Undangan Negeri
H bertentangan dengan undang-undang Perlembagaan Perak dan, oleh itu, batal dan tak sah. Pemohon-pemohon kemudiannya memfail suatu Notis Usul dalam Mahkamah Persekutuan untuk mendapat jawapan kepada beberapa soalan-soalan berterusan dengan art. 63 Perlembagaan Perak. Isu utama yang perlu dibicara di hadapan
I mahkamah ini ialah sama ada atas tafsiran benar art. XLIV Perlembagaan Negeri Perak dibaca bersama dengan Peraturan-peraturan Majlis Mesyuarat Dewan Undangan dan Enakmen

Dewan Undangan (Keistimewaan) 1959 dan/atau semua undang-undang relevan, keputusan responden ialah *ultra vires* dan, oleh itu, batal dan tak sah. Responden menghujah bahawa isu-isu yang dibangkit oleh pemohon-pemohon tidak boleh diadili dan, sebagai sokongan, bergantung kepada art. 72(1) Perlembagaan Persekutuan ('art. 72(1)') dan Enakmen Dewan Undangan (Keistimewaan) Perak. Responden juga membangkit suatu bantahan bahawa oleh kerana beliau telah didakwa dalam tugas rasminya sebagai Speaker, tindakan itu sepatutnya dimulakan di bawah A. 53 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT').

Diputuskan (berpihak kepada pemohon-pemohon)
Oleh Augustine Paul HMP menyampaikan penghakiman mahkamah:

(1) Dengan jelasnya, cabaran pemohon-pemohon terhadap penggantungan mereka dari Dewan Undangan ialah satu perkara yang menjejaskan status mereka di sisi undang-undang seperti yang dimaksudkan dalam s. 41 Akta Relif Spesifik 1950 ('Akta'). Mereka, oleh itu, berhak menuntut suatu deklarasi hak mereka di sisi undang-undang berikutan dengan A. 15 k. 16 KMT. Ia tidak boleh diadu bahawa mereka seharusnya menggunakan A. 53 KMT sendirinya untuk mendapat relif perisytiharan atas dua sebab. Pertamanya, A. 53 KMT tidak mengatakan bahawa ia merupakan peruntukan ekslusif untuk pemberian relif perisytiharan seperti yang dinyatakan oleh Lord Diplock dalam *O'Reilly v. Mackman*. Keduanya, apabila Akta telah diperbuat A. 53 KMT tidak wujud dan, oleh itu, kepatuhan kepadanya tidak dapat difikirkan. Sungguhpun begitu, dan dalam apa keadaan pun, dalam kes-kes bersifat sebegini bentuk relif yang paling berpatutan ialah melalui deklarasi. Oleh yang demikian, bantahan yang dibangkit oleh responden telah ditolak.

(2) Dalam menyelesaikan soalan sama ada perintah-perintah yang dicari oleh pemohon-pemohon boleh diadili peruntukan yang menguasai ialah art. 72(1), yang mesti dibaca sebagai tertakluk kepada kewujudan suatu kuasa atau bidangkuasa, sama ada ia sedia ada atau nyata, untuk membuat apa yang telah dibuat. Mahkamah diberi kuasa untuk menentukan sama ada sesuatu kuasa yang dituntut dengan khusus telah pada hakikatnya disediakan. Isu-isu yang dibangkitkan oleh pemohon-pemohon, oleh itu, boleh diadili.

(3) Peraturan Majlis Mesyuarat 72(1) memberi kuasa kepada Jawatankuasa untuk mengambil perhatian akan "... apa-apa perkara yang nampaknya menjejaskan kuasa-kuasa dan keistimewaan Dewan Undangan ...". Bagi suatu "... perkara ..." untuk mempunyai kesan macam itu ia mestilah menyalahi undang-undang atau melanggari kuasa-kuasa dan keistemewaan Dewan Undangan. Ia hanya pada masa itu bahawa ia boleh dikatakan bahawa ia nampaknya menjejaskan kuasa-kuasa dan keistimewaan Dewan Undangan. Saman-saman terhadap pemohon-pemohon menyatakan bahawa perbuatan mereka merupakan penghinaan. Oleh kerana penghinaan tidak ditetapkan dengan khusus, perbuatan itu tidak termasuk dalam lingkungan Peraturan Majlis Mesyuarat 72(1). Enakmen Dewan Undangan (Keistimewaan) 1959 yang diperbuat oleh Dewan Undangan Perak tidak mengandungi apa-apa peruntukan untuk kesalahan penghinaan dan hukumannya. Sebagai perbandingan, rujukan mesti dibuat kepada Akta Dewan Parlimen (Keistimewaan dan Kuasa-kuasa) 1952 yang membuat peruntukan khas bagi penghinaan. Kesimpulannya ialah bahawa art. XLIV Perlembagaan Negeri Perak dibaca bersama dengan Peraturan-peraturan Majlis Mesyuarat Dewan Undangan dan Enakmen Dewan Undangan (Keistimewaan) 1959 tidak menyediakan untuk kesalahan penghinaan dan hukuman penggantungan dari menghadiri sesyen-sesyen Dewan Undangan Negeri yang timbul sebagai akibatnya. Disebabkan itu, penggantungan pemohon-pemohon kerana melakukan penghinaan adalah batal dan tak sah.

Case(s) referred to:

Ah Thian v. Government of Malaysia [1976] 2 MLJ 112 ***(refd)***

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2008] 6 CLJ 473 CA ***(refd)***

Bradlaugh v. Gossett [1884] 12 QBD 271 ***(refd)***

British Railway Board v. Pickin [1974] AC 765 ***(refd)***

Cooper v. Union of India AIR [1970] SC 1318 ***(refd)***

Dato Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor [2007] 3 CLJ 377 CA ***(refd)***

Doyle v. Falconer LR 1 PC 328 ***(refd)***

Fan Yew Teng v. Government of Malaysia [1976] 2 MLJ 262 ***(refd)***

Fenton v. Hampton [1858] 11 Moore 347 ***(refd)***

Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors [1986] 2 CLJ 209; [1986] CLJ (Rep) 142 SC ***(refd)***

JB Jeyaratnam v. Attorney General of Singapore [1989] 1 MLJ 137 ***(refd)***

Kielley v. Carson [1841-1842] 4 Moore 63 ***(refd)***

Lim Cho Hock v. Speaker, Perak State Legislative Assembly [1979] 2 MLJ 85 ***(refd)***
Lim Kit Siang v. Dato Seri Dr Mahathir Mohamed [1987] 1 MLJ 383 ***(refd)***
O'Reilly v. Mackman [1982] 2 All ER 1124 ***(refd)***
Petaling Tin Bhd v. Lee Kian Chan & Ors [1994] 2 CLJ 346 SC ***(refd)***
Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors SCC 3 [2007] 184 ***(refd)***
Robert Cheah Foong Chiew v. Lembaga Jurutera Malaysia [2009] 1 CLJ 192 CA ***(refd)***
Sivarasa Rasiah v. Badan Peguam Malaysia & Anor [2002] 2 CLJ 697 CA ***(refd)***
Steed v. Secretary of State for the Home Departure [2000] 3 All ER 226 ***(refd)***
Sugumar Balakrishnan v. Chief Minister of State of Sabah & Anor [1989] 1 MLJ 133 ***(refd)***
Surinder Singh Kanda v. Government of Malaysia [1962] 2 MLJ 169 ***(refd)***
Teh Guan Teik v. Inspector General of Police & Anor [1998] 3 CLJ 153 FC ***(refd)***
The Attorney General of Hong Kong v. Zauyah Wan Chik & 3 Ors & Another Appeal [1995] 3 CLJ 35 CA ***(refd)***
The Speaker of the National Assembly v. De Lille MP and Anor [1999] ZASCA 50 ***(refd)***
Tun Datu Hj Mustapha Datu Harun v. Legislative Assembly of the State of Sabah [1986] 2 MLJ 388 ***(refd)***
Tun Datuk Haji Mohamed Adnan Robert v. Tun Datu Haji Mustapha Datu Harun [1987] 1 MLJ 471 ***(refd)***

Legislation referred to:
Constitution of Perak, art. 63
Federal Constitution, art. 72(1)
Rules of the High Court 1980, O. 15 r. 16, O. 53
Specific Relief Act 1950, s. 41

Parliament (Privileges, Immunities and Powers) Act 1985 [Sing], s. 3
Rules of the Supreme Court 1977 [UK], O. 53

Other source(s) referred to:
Civil Procedure 2008, vol 5, p 1532
Erskine May, *Parliamentary Practice,* 20th edn, pp 72, 92
Gerard Carney, *Members of Parliament: Law and Ethics,* p 168
Lord Woolf, *The Declaratory Judgment,* 2nd edn, p 90
Polloct & Mulla, *Indian Contract and Specific Relief Act,* 10th edn, p 1065
Sarkar's Specific Relief Act, 13th edn, p 316

A *For the appellants - Firoz Hussein Ahmad Jamaluddin (Datuk Mohd Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As Sidek Mohd Sidek, Cheng Mai, Badrul Hishah Abd Wahap, Mohd Reza Hassan & Shahir Ab Razak with him); M/s Ong-Hanim & Badrul*

For the respondent - Hj Sulaiman Abdullah (Philip Koh, Ranjit Singh, Chan
B *Kok Keong, Razlan Hadri Zulkifli, Edmund Bon Tai Soon, Amer Hamzah, Leong Cheok Keng, Nga Hock Cheh & Hanipa Maidin with him); M/s Chan & Assoc*

For the intervener - Tan Sri Abdul Gani Patail (Tun Abd Majid Tun Hamzah, Dato' Kamaludin Md Said, Azizah Hj Nawawi, Amarjeet Singh & Suzana Atan with him); A-G Chambers

C *Watching brief for Kerajaan Negeri Perak - Dato' Ahmad Kamal Md Shahid; State Legal Advisor, Perak*

Reported by Suresh Nathan

D

JUDGMENT

Augustine Paul FCJ:

[1] On 6 February 2009 YAB Dato' Dr. Zambry bin Abdul
E Kadir (the first applicant) was sworn in before His Royal Highness the Sultan of Perak as the Menteri Besar of Perak in place of YB Dato' Seri Mohammad Nizar Jamaluddin. On 10 February 2009 YB Encik Zainol Fadzli Paharuddin (the second applicant), YB Datuk Ramly Zahari (the third applicant), YB Puan Hamidah
F Osman (the fourth applicant), YB Datuk Saarani Mohammed (the fifth applicant), YB Encik Mohd Zahir Abdul Khalid (the sixth applicant) and YB Dr Mah Hang Soon (the seventh applicant) were sworn in before His Royal Highness the Sultan of Perak as State Executive Councillors of Perak.

G **[2]** By a letter dated 11 February 2009, the Assemblyman from Taman Canning complained to the respondent, who is the Speaker of the State Legislative Assembly of Perak, that the applicants had committed acts of contempt of the State Legislative Assembly. The material parts of the letter read as follows:

H

Re: Contempt of our August Perak State Assembly by YB Dr Zambry Abdul Kadir, Zainol Fadzi Paharuddin, Ramly Zahari, Hamidah Osman, Saarani Mohamad, Mohd Zahir Abdul Khalid dan Dr Mah Hang Soon

I

1. I am under duty to complain against the above persons who over the last two weeks have acted in manner calculated to bring down the honour, dignity and good name of our august Perak State Assembly.

2. The provisions of the Perak Constitution, whose provisions are the supreme law of Perak, have been ignored. YB Dr Zambry and others have sworn to preserve, protect and defend the Perak State Constitution (Article XLVII).

3. I believe that YB Dr Zambry and others should be referred to the Committee of Powers and Privileges under Standing Orders 72.

4. I draw your attention and set out below in full Article XVI(6) of the Perak State Constitution:

   (6) If the Menteri Besar ceases to command the confidence of the majority of the members of the Legislative Assembly, then, unless at his request His Royal Highness dissolves the Legislative Assembly, he shall tender the resignation of the Executive Council.

5. YB Dr Zambry, who is the leader and others comprising of Zainol Fadzi Paharuddin, Ramly Zahari, Hamidah Osman, Saarani Mohamad, Mohd Zahir Abdul Khalid and Dr Mah Hang Soon have clearly acted outside the terms of the Article as the Menteri Besar and his EXCO have not resigned.

6. Under the Perak State Constitution and by conventions recognized by highest principles of constitutional law, the government of the day should continue. YB Dr Zambry is acting illegally by appointing an EXCO contrary to our supreme law.

7. Our august Perak State Assembly is now besieged by YB Dr Zambry and others which actions are detrimental to the good name and smooth running of our august Perak State Assembly. We are being made the laughing stock of the world!

8. As honourable State Assemblymen, and this includes YB Dr Zambry and others, they are bound by the rulings and resolutions. As we have not decided otherwise by any resolution or State Assembly to remove YAB Dato Seri Mohammad Nizar Jamaluddin, the action of YB Dr Zambry and others should be called into account immediately in order to prevent further confusion and chaos.

9. As a matter of urgency, kindly do the necessary by calling a meeting of the Committee of Powers and Privileges.

[3] On 13 February 2009 the respondent issued a summons pursuant to Standing Order 72 of the Standing Orders of the State Assembly of Perak containing the alleged breaches of privilege and a direction against the first applicant to attend before the Committee of Privileges on 18 February 2009. The material parts of the summons read as follows:

Yang Dipertua
Dewan Negeri Perak Darul Ridzuan

To: YB Datuk Dr Zambry Abdul Kadir ... Defendant

Committee Of Privileges Meeting
Summons To Attend

Pursuant to Standing Orders of the
State Legislative Assembly of Perak Darul Ridzuan

[Diluluskan oleh Dewan Perhimpunan Undangan Negeri Perak Darul Ridzuan, dalam Mesyuarat Pertama, Penggal Kedua, Dewan Perhimpunan Undangan Negeri Perak Darul Ridzuan yang Ketujuh pada 23.3.1988, menurut Kertas Dewan Bil. 11/88 dan berkuatkuasa mulai 1.5.1988.]

TAKE NOTICE that pursuant to a complaint by YB Encik Wong Kah Woh ("the Complainant"), State Assemblyman for Canning Garden ("letter" annexed and marked Annexure "A") that you, the Defendant be referred to the Committee of Powers and Privileges ("the Committee"); the Committee shall meet, in accordance with S.O. 72 to Consider this matter on the date, time and place stated below:

Date : 18/2/2009

Time : 2.30 PM

Place : Aras G, Bilik Mesyuarat Pejabat Kewangan Ng. Perak, Bangunan Perak Darul Ridzuan.

Mr Speaker, being satisfied, that a *prima facie* breach of privileges has been committed by you, the Defendant is bound to refer such matter to the Committee (Annexure "B")

(I) WHEREAS YAB Dato Seri Mohammad Nizar Jamaluddin has been validly and legally appointed the Menteri Besar of Perak under Article XII of the Perak Constitution which appointment is valid until there is a resignation;

(II) AND WHEREAS the Honourable Menteri Besar Dato Seri Mohammad Nizar Jamaluddin has not lost any vote of confidence in our august State Assembly;

(III) AND WHEREAS the State Constitution contains neither express nor implied power for dismissal of the Menteri Besar;

You, the defendant are, therefore, required to be present before the Committee in respect of the breach of privileges complained of as enumerated below:

(i) That contrary to the provision of the Perak Constitution, you have and are wrongly holding yourself out as the Menteri Besar;

(ii) And that you have unlawfully proceeded to form an EXCO despite an existing body validly appointed whose members have neither resigned their office nor have their appointments been validly terminated under the Perak Constitution;

(iii) And that you and others have illegally occupied and taken possession of the office of the State Secretariat and taken possession of the office of the State Secretariat and thereby committing trespass and liable to be sued for exemplary damages;

(iv) And that the above actions constitute CONTEMPT against our august State Assembly and is obstructing its smooth running and functioning;

(v) And that such CONTEMPT, in particular, has embarrassed the Honourable the Menteri Besar, YAB Dato Seri Mohammad Nizar Jamaluddin and had prevented his EXCO from discharging and performing their duties under the Perak Constitution;

(vi) And that such CONTEMPT as displayed by you is conduct unbecoming of an honourable member of our august Perak State Assembly and contrary to the Standing Orders, Perak Constitution and the Rukunegara in particular, Principle 5 – Good Behaviour and Morality;

(vii) And that such conduct unbecoming has brought the good name of our august State Assembly into disrepute, public ridicule, odium and scandal;

All persons and witnesses required to attend before the Committee shall dress in lounge suit or any other smart attire permitted by the Committee and shall be examined on oath.

No legal representation is permitted. (see Erskine May's Parliamentary Practice 16th ed. P.139)

A If you choose to absent yourself, the Committee will proceed to deliberate and make the necessary findings which will include suspension or expulsion from our august State Assembly.

Dated this 13th day of February 2009.

B By Order,
V. SIVAKUMAR
SPEAKER
PERAK STATE ASSEMBLY

cc. Members of the Committee of Privileges.

C

[4] The respondent also sent a similar summons containing the alleged breaches of privilege and a direction to each of the second to the seventh applicants to attend before the Committee of Privileges. The material parts of the summons read as follows:

D Yang Dipertua
Dewan Negeri Perak Darul Ridzuan

Committee Of Privileges Meeting Summons To Attend

E Pursuant to Standing Orders of the State Legislative assembly of Perak Darul Ridzuan

[Diluluskan oleh Dewan Perhimpunan Undangan Negeri Perak Darul Ridzuan, dalam Mesyuarat Pertama, Penggal Kedua, Dewan Perhimpunan Undangan Negeri Perak Darul Ridzuan yang
F Ketujuh pada 23.3.1988, menurut Kertas Dewan Bil. 11/88 dan berkuatkuasa mulai 1.5.1988.]

TAKE NOTICE that pursuant to a complaint by YB Encik Wong Kah Woh ("the Complainant"), State Assemblyman for Canning Garden ("letter" annexed and marked Annexure "A") that you,
G the Defendant be referred to the Committee of Powers and Privileges ("the Committee"); the Committee shall meet, in accordance with S.O. 72 to Consider this matter on the date, time and place stated below:

H Date : 18/2/2009

Time : 2.30 PM

Place : Aras G, Bilik Mesyuarat Pejabat Kewangan Ng. Perak, Bangunan Perak Darul Ridzuan.

I Mr Speaker, being satisfied, that a *prima facie* breach of privileges has been committed by the Defendants is bound to refer such matter to the Committee (Annexure "B")

(I) WHEREAS YAB Dato Seri Mohammad Nizar Jamaluddin has been validly and legally appointed the Menteri Besar of Perak under Article XII of the Perak Constitution which appointment is valid until there is a resignation;

(II) AND WHEREAS the Honourable Menteri Besar Dato Seri Mohammad Nizar Jamaluddin has not lost any vote of confidence in our august State Assembly;

(III) AND WHEREAS the State Constitution contains neither express nor implied power for dismissal of the Menteri Besar;

You, the Defendants are, therefore, required to be present before the Committee in respect of the breach of privileges complained of as enumerated below:

(i) That contrary to the provision of the Perak Constitution, you have and are wrongly held yourselves out as EXCO members;

(ii) That you have unlawfully agreed to participate in an illegal EXCO despite an existing body validly appointed whose members have neither resigned their office nor have their appointments been validly terminated under the Perak Constitution;

(iii) And that you and others have illegally occupied and taken possession of the office of the State Secretariat and thereby committing trespass;

(iv) And that the above actions constitute CONTEMPT against our august State Assembly and is obstructing its smooth running and functioning;

(v) And that such CONTEMPT, in particular, has embarrassed the Honourable the Menteri Besar, YAB Dato Seri Mohammad Nizar Jamaluddin and had prevented his EXCO from discharging and performing their duties under the Perak Constitution;

(vi) And that such CONTEMPT as displayed by you, the Defendants, is conduct unbecoming of honourable members of our august Perak State Assembly and contrary to the Standing Orders, Perak Constitution and the Rukunegara in particular, Principle 5 – Good Behaviour and Morality;

A (viii) And that such conduct unbecoming has brought the good name of our august State Assembly into disrepute, public ridicule, odium and scandal;

All persons and witnesses required to attend before the Committee shall dress in lounge suit or any other smart attire permitted by the Committee and shall be examined on oath.

No legal representation is permitted. (see Erskine May's Parliamentary Practice 16th ed. P.139)

If you choose to absent yourself, the Committee will proceed to deliberate and make the necessary findings which will include suspension or expulsion from our august State Assembly.

Dated this 13th day of February 2009.

By Order,
V. SIVAKUMAR
SPEAKER
PERAK STATE ASSEMBLY

cc. Members of the Committee of Privileges.

[5] The applicants appeared at the appointed time and place as stated in the summons under protest and read out a written objection to the Committee of Privileges stating that they did not recognise or submit to the jurisdiction of the said committee. The material parts of the written objection read as follows:

Notis Saman Untuk Hadir Ke Mesyuarat Jawatankuasa Kebebasan Bertarikh 13.02.09 Yang Dikeluarkan Oleh YDP Dewan Undangan Negeri Perak

Bantahan Awal

AMBIL PERHATIAN bahawa kehadiran Y.A.B Menteri Besar dan kesemua 6 ahli-ahli Majlis Mesyuarat Kerajaan (MMK) pada hari ini (18.02.09) di dalam mesyuarat Jawatankuasa (J/K) Kebebasan bukan bermakna kami mengiktiraf dan memperakui bidangkuasa J/K ini ke atas kami.

Kehadiran kami di mesyuarat J/K ini adalah DENGAN BANTAHAN atas alasan-alasan berikut;

a. Saman untuk hadir ini dikatakan telah dikeluarkan di bawah Perintah Tetap (P.T) 72 kerana kami dikatakan telah melakukan kesalahan melanggar peraturan hak-hak dan kebebasan Dewan. Adalah menjadi hujahan kami bahawa "kesalahan melanggar peraturan hak-hak dan kebebasan

Dewan" hendaklah bersangkutan dengan kesalahan-kesalahan yang berlaku di dalam Dewan dan bukannya di luar Dewan. Jika dilihat kepada kesalahan-kesalahan yang dikatakan dilakukan oleh kami di m.s 2, 3 dan 4 notis bertarikh 13.02.09 (yang mana dinafikan sekerasnya-kerasnya), ianya jelas menunjukkan kesalahan-kesalahan yang dikatakan berlaku tersebut adalah di luar Dewan dan bukannya di dalam Dewan.

Dr Subhash C. Kashyap di dalam bukunya Parliamentary Procedure, Law Privileges Practice & Precedents, Second Edition telah berkata di m.s 913

> ... the litmus test of privilege is whether the matter sought to be raised as a question of privilege has a direct nexus with the business of the House or its Committees. If not, no question of privilege would arise.

Berdasarkan kepada perkara di atas, kami menghujah bahawa tiada kausa tindakan yang sah (cause of action) telah dilakukan oleh kami yang menjustifikasikan kami dipanggil.

b. Dalam pada itu, kami juga ingin mengingatkan J/K yang mulia ini bahawa kesalahan-kesalahan kebebasan yang dikatakan dilakukan oleh kami seperti di para (i) (ii) (v) di m.s 2 dan 3 notis bertarikh 13.02.09 (yang mana dinafikan sekeras-kerasnya) adalah berkaitan satu isu yang berkaitan dengan tindakan undang-undang yang di failkan oleh Dato Seri Ir Hj Mohamed Nizar bin Jamaludin ke atas Dato Dr Zambry bin Abd Kadir melalui kes Mahkamah Tinggi Kuala Lumpur Permohonan Semakan Kehakiman No. 25-25-2009. Oleh yang demikian, ianya adalah "sub-judice".

P.T 23(i)(g) menyatakan;

Tiap-tiap soalan itu hendaklah menepati peraturan-peraturan yang berikut:

> (g) sesuatu soalan itu tidak boleh digubal dengan cara yang mungkin memudaratkan sesuatu kes yang sedang dibicarakan, atau tentang apa-apa perkara dalam pertimbangan mahkamah.

Manakala P.T 36(2) pula menyatakan;

> Rujukan tidak boleh dibuat kepada apa-apa perkara yang sedang dalam timbangan Mahkamah sekiranya pada pertimbangan Pengerusi boleh menyentuh kepentingan-kepentingan pihak-pihak yang berkenaan.

A Kami menghujah sekiranya di dalam isi-isi soalan yang dikemukakan di dalam Dewan seperti yang termaktud di dalam P.T. 23 (1) (g) serta kandungan ucapan di dalam P.T 36(2) yang dibangkitkan dalam Dewan Yang Mulia mengenai perkara-perkara di dalam timbangan Mahkamah tidak boleh sama sekali digubal atau dibangkitkan oleh mana-mana pihak kerana boleh menyentuh kepentingan pihak-pihak di dalam kes Mahkamah, maka kami tidak nampak bagaimana J/K yang mulia ini boleh merujukkan, menyiasat dan membicarakan sesuatu perkara yang sedang dipertimbangkan di mahkamah untuk mendapatkan penjelasan daripada kami. Oleh yang demikian, kami menghujah perkara-perkara ini sewajarnya dibiarkan kepada Mahkamah Tinggi Kuala Lumpur untuk dibicarakan bagi menentukan kesahihan Menteri Besar dan barisan MMK yang dilantik oleh DYMM Sultan Perak. Sehingga perkara ini diputuskan oleh Mahkamah Tinggi, *"status quo"* mengenai kesalahan-kesalahan yang dikatakan dilakukan oleh kami di para (i) (ii) (iv) di m.s 2 dan 3 notis bertarikh 13.02.09 tersebut (yang mana dinafikan sekeras-kerasnya) tidak seharusnya dirujuk, disiasat dan dibicarakan oleh J/K yang mulia ini.

c. Kami juga menghujah J/K yang mulia ini bukanlah forum yang sesuai untuk merujuk, menyiasat atau membicarakan penyalahgunaan kebebasan yang dikatakan dilakukan oleh kami di para (i) (ii) (iv) m.s 2 dan 3 notis bertarikh 13.02.09 tersebut (yang mana dinafikan sekeras-kerasnya) kerana perkara sama sudahpun berada di pertimbangan Mahkamah Tinggi Kuala Lumpur yang mana tarikh sebutannya telah ditetapkan pada hari ini (18.02.09). Oleh itu sewajarnya perkara ini tidak dirujuk, disiasat dan dibicarakan pada mesyuarat J/K ini dan ianya hendaklah ditentukan dan dibicarakan di Mahkamah Tinggi Kuala Lumpur.

Berdasarkan kepada hujahan-hujahan kami di atas, maka kami menghujah penyalahgunaan kebebasan yang dikatakan dilakukan oleh kami di para (iii) (iv) (vi) (vii) dan (viii) m.s 2, 3 dan 4 notis bertarikh 13.02.09 tersebut (yang mana dinafikan sekeras-kerasnya) adalah tidak berbangkit dan "non-issue".

Bertarikh pada 18.02.09.

[6] On 19 February 2009 the first applicant was served with a letter dated 18 February 2009 which stated that the respondent had found him guilty as charged and in exercising his powers as Speaker suspended him from attending sessions of the State Legislative Assembly for a period of 18 months. The material parts of the letter suspending him read as follows:

> Yang Dipertua
> Dewan Negeri Perak Darul Ridzuan
>
> Yang Berhormat Ahli Dewan Undangan untuk Pangkor, Dato Dr. Zambry Abdul Kadir telah disaman di hadapan Jawatankuasa Hak dan Kebebasan berdasarkan dakwaan seperti disaman.
>
> Saya telah mengadakan suatu mesyuarat untuk mendengar keterangan Pengadu, YB Wong Kah Woh, Ahli Dewan Undangan Negeri untuk kawasan Taman Canning. Saya telah memutuskan dan memerintah bahawa terdapat suatu kes *prima facie* penghinaan Dewan Undangan Negeri Perak oleh Dato Dr. Zambry Abdul Kadir. Oleh itu, saya meminta penjelasan daripada ahli yang mulia.
>
> Dato Dr. Zambry tidak memberi sebarang penjelasan atas tindakan beliau. Saya dengan ini memerintah bahawa ahli yang mulia gagal menawarkan sebarang penjelasan atas tindakan mereka yang menghina Dewan Undangan Negeri dan salah seperti yang didakwa.
>
> Saya berpendapat bahawa penghinaan Dewan Undangan Negeri adalah serius.
>
> Dalam mempergunakan kuasa saya sebagai Yang Dipertua Dewan Undangan Negeri Perak, saya dengan ini membuat perintah/keputusan seperti berikut, i.e. bahawa ahli yang mulia ini, Dato Dr Zambry Abdul Kadir adalah dengan serta merta digantung dan dilarang dari menghadiri sessi-sessi DUN selama 18 bulan.
>
> ...
>
> Y.B V. Sivakumar
> Tuan Yang Dipertua Dewan Undangan Negeri Perak
> 18hb Februari 2009

[7] On the same day the second to the seventh applicants were also served with letters dated 18 February 2009 which stated that the first respondent had found them guilty as charged and in exercising his powers as Speaker had suspended them from attending sessions of the State Legislative Assembly for a period of 12 months. The material parts of the letter suspending them read as follows:

A

Yang Dipertua
Dewan Negeri Perak Darul Ridzuan

Kesemua 6 Ahli Yang Mulia Dewan Undangan Negeri Perak; Zainol Fadzi Paharuddin, Datuk Ramly Zahari, Hamidah Osman, Datuk Saarani Mohamad, Mohd Zahir Abdul Khalid dan Dr Mah Hang Soon telah disaman di hadapan Jawatankuasa Hak dan Kebebasan berdasarkan dakwaan seperti disaman.

Saya telah mengadakan suatu mesyuarat untuk mendengar keterangan Pengadu, YB Wong Kah Woh, Ahli Dewan Undangan Negeri untuk kawasan Taman Canning. Saya telah memutuskan dan memerintah bahawa terdapat suatu kes prima facie penghinaan Dewan Undangan Negeri Perak oleh mereka. Oleh itu, saya meminta penjelasan daripada ahli-ahli yang mulia.

6 ahli yang berkenaan telah gagal dan tidak memberi sebarang penjelasan atas tindakan mereka. Saya dengan ini memerintah bahawa 6 ahli yang berkenaan gagal menawar sebarang penjelasan atas tindakan mereka yang menghina Dewan Undangan Negeri dan salah seperti yang didakwa.

Saya berpendapat bahawa penghinaan Dewan Undangan Negeri adalah serius.

Dalam mempergunakan kuasa saya sebagai Yang Dipertua Dewan Undangan Negeri Perak, saya dengan ini membuat perintah/keputusan seperti berikut, i.e. bahawa setiap ahli tersebut di atas iaitu; Zainol Fadzi Paharuddin, Datuk Ramly Zahari, Hamidah Osman, Datuk Saarani Mohamad, Mohd Zahir Abdul Khalid dan Dr Mah Hang Soon adalah dengan serta-merta digantung dan dilarang dari menghadiri sessi-sessi DUN selama 12 bulan.

...

Y.B V. Sivakumar
Tuan Yang Dipertua Dewan Undangan Negeri Perak
18hb Februari 2009

[8] The respondent had stated in the affidavit affirmed by him that the decision to suspend the applicants was a collective decision of the Committee of Privileges and himself. He further affirmed that in the sitting of the State Legislative Assembly held on 3 March 2009 the Assembly had adopted the report of the Committee of Privileges dated 18 February 2009 on the matter by way of resolution. The sitting had been summoned by he himself after his request to His Royal Highness the Sultan of Perak to summon the Legislative Assembly met with no response.

[9] The applicants then filed an Originating Summons No: 24-247-2009 dated 2 March 2009 at the High Court in Ipoh seeking *inter alia*, the following orders: A

(a)

(1) A declaration that the decision of the first respondent in suspending and prohibiting the first applicant from attending the State Legislative Assembly for a period of 18 months is against the Laws of the Constitution of Perak and is accordingly null and void; B C

(2) A declaration that the decision of the first respondent in suspending and prohibiting the first applicant from attending the sitting of the State Legislative Assembly for a period of 18 months is *ultra vires* the Laws of the Constitution of Perak, the Standing Orders of the State Legislative Assembly of Perak, the Legislative Assembly (Privileges) Enactment 1959 and/or all related laws and is accordingly null and void; D

(3) A declaration that the first respondent's act of suspending and prohibiting the first applicant from attending the sitting of the State Legislative Assembly for a period of 18 months is illegal; E

(4) A declaration that the decision of the first respondent in suspending and prohibiting the Second to the Seventh Applicants from attending the sitting of the State Legislative Assembly for a period of 12 months is against the Laws of the Constitution of Perak and is accordingly null and void; F

(5) A declaration that the decision of the first respondent in suspending and prohibiting the second to the seventh applicants from attending the sitting of the State Legislative Assembly for a period of 12 months is *ultra vires* the Laws of the Constitution of Perak, the Standing Orders of the State Legislative Assembly of Perak, the Legislative Assembly (Privileges) Enactment 1950 and/or all related laws and is accordingly null and void; G H

(6) A declaration that the first respondent's act of suspending and prohibiting the second to the seventh applicants from attending the sitting of the State Assembly for a period of 12 months is illegal; I

(7) Further, a declaration that the applicants are entitled to attend and take part in all State Assembly sittings and to carry out all their functions and duties therein;

(8) Further, a declaration that the second respondent is not bound by the decision of the first respondent in suspending and prohibiting the applicants from attending the sitting of the second respondent;

(9) Further, a declaration that the second respondent is not bound by any directions, order and/or guidelines of the first respondent arising from or relating to the decision of the first respondent of 18 February 2009; and

(10) Such further or other relief that the court deems fit and proper.

[10] The applicants then filed a Notice of Motion No: 06-4-2009(A) dated 6 April 2009 in the Federal Court for certain questions to be answered pursuant to art. 63 of the Constitution of Perak ("art. 63"). The questions are:

(i) Whether on a true interpretation of Article XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 and/or all relevant laws, the first defendant's decision to suspend and prohibit the 1st plaintiff from attending sessions of the State Legislative Assembly for 18 months, was *ultra vires* and therefore, null and void;

(ii) Whether on a true interpretation of Article XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 and/or all relevant laws, the first defendant's decision to suspend and prohibit the 2nd till the 7th plaintiffs from attending sessions of the State Legislative Assembly for 12 months, was *ultra vires* and therefore, null and void;

(iii) Whether on a true interpretation of Article XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 and/or all relevant laws the charges framed against the plaintiffs *vide* the Summons to Attend the Committee of Privileges dated 13 February 2009 are capable of constituting a contempt against the State Assembly.

(iv) Whether the speaker can call for a reassembly of the Perak State Legislative Assembly without a proclamation of the Ruler summoning the Assembly under Standing Orders 8(1) read with Article XXXVI(1) of the Laws of the Constitution of Perak Darul Ridzuan.

(v) If the answer to Q (iv) is in the negative then whether the "reassembling" of the State Legislative Assembly on 3 March 2009 was lawful.

(vi) If the answer to Q (v) is in the negative, then whether any motion or resolution passed in such Assembly is binding/legal/lawful.

[11] When the case was called up for hearing before us on 13 April 2009 learned counsel for the applicants said that the Dewan Undangan Negeri Perak has been withdrawn as a party to the proceedings leaving behind only the respondent. Learned counsel for the respondent then said that an application had been filed in the High Court to strike out the proceeding on the grounds that the subject matter of the suit is not justiciable and that the proceeding ought to have been commenced by way of judicial review. The hearing of the application had commenced and arguments were heard by the High Court on 2 April 2009 and was adjourned to 9 April 2009. It was then taken off in view of the application made to transfer the proceedings to this court. Learned counsel added that if the case is not remitted back to the High Court then he would raise the same objections before us. Both the learned counsel for the applicants and the Honourable Attorney General said that as the case is still pending in the High Court it can still be heard by this court. In order to resolve the objection raised it is first necessary to have a closer look at art. 63. It reads as follows:

> Without prejudice to any appellate or revisional jurisdiction of the Federal Court, where in any proceedings before another court, a question arises as to the effect of any Article in the laws of the Constitution or any part thereof, the Federal Court may, on the application of either party to the proceedings, determine that question and either dispose of the case or remit it to the other court to be disposed of in accordance with the determination.

A question as to the effect of any article in the Laws of Constitution of Perak may arise at any stage of the proceedings. It may be implicit in the pleadings itself thereby warranting an application for the transfer of the proceeding at the commencement of the hearing or it may arise only in the course of the hearing or it may become apparent only after the hearing had commenced. This is clear from the definition of the word "proceeding" itself which is defined in *Black's Law Dictionary* 6th edn. as:

> In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment.

Thus an application for the transfer of the case to the Federal Court may be made at any stage of the proceedings.

[12] Accordingly, we dismissed the objection raised. Needless to say, learned counsel for the respondent will not be precluded from raising the objection which he intended to raise in the High Court before us.

[13] The objection raised by learned counsel for the respondent was that as the respondent had been sued in his capacity as Speaker the action ought to have been commenced under O. 53 of the Rules of the High Court 1980 ("O. 53") for judicial review. He referred to the judgments of the Court of Appeal in *Dato Seri Anwar bin Ibrahim v. Perdana Menteri Malaysia & Anor* [2007] 3 CLJ 377, *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 6 CLJ 473 and *Robert Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [2009] 1 CLJ 192 and contended that any challenge to the decision of a public authority can only be commenced by way of judicial review. In his reply learned counsel for the applicants said that O. 53 is not applicable in this case as there is no review of any decision that is involved. The declaration that is sought is only that the decision of the respondent to suspend the applicants is unconstitutional and *ultra vires*. He also argued that the right to seek declaratory relief is a statutory right conferred by s. 41 of the Specific Relief Act 1950 ("s. 41"). He then referred to cases such as *Petaling Tin Bhd v. Lee Kian Chan & Ors* [1994] 2 CLJ 346, *Surinder Singh Kanda v. Government of Malaysia* [1962] 2 MLJ 169 and *Teh Guan Teik v. Inspector General of Police* [1998] 3 CLJ 153, where it was held that

applications for declaratory relief and *certiorari* are alternative remedies and are not mutually exclusive. Puan Azizah binti Haji Nawawi who submitted on behalf of the Honourable Attorney General said that as the applicants are seeking to have their legal rights asserted s. 41 is applicable and that O. 53 is thereby not the appropriate remedy.

[14] In order to resolve the objection raised by learned counsel it is first necessary to set out the relevant parts of O. 53 prior to its amendment in the year 2000 and O. 15 r. 16 of the Rules of the High Court 1980 ("O. 15 r. 16").

Order 53

Application For Order Of *Mandamus*, Prohibition, *Certiorari*, Etc

No application for order of mandamus, etc. without leave.

1. (1) No application for an order of *mandamus*, prohibition or *certiorari* shall be made unless leave therefore has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to the Court, except in vacation when it may be made to a Judge in Chambers, and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits.

(4) The court or Judge may, in granting leave, impose such terms as to costs and as to giving security as it or he thinks fit.

(5) The grant of leave under this rule to apply for an order of prohibition or an order of *certiorari* shall, if the Court or Judge so directs, operate as a stay of the proceedings in question until the determination of the application or until the Court or Judge otherwise orders.

A Order 15 rule 16

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

B

[15] What requires deliberation in the light of the submissions advanced by the parties is whether O. 53 and O. 15 r. 16 are mutually exclusive. Reference will first be made to cases on this issue prior to the amendment of O. 53 in the year 2000. In C *Surinder Singh Kanda v. the Government of the Federation of Malaya* [1962] MLJ 167 it was suggested that the only remedy available on the facts of the case was *certiorari* but the Privy Council ruled that the remedy by declaration was available also. In *Sugumar Balakrishnan v. Chief Minister of State of Sabah & Anor* [1989] 1 D MLJ 133 it was held that declaration and *certiorari* are concurrent remedies and not mutually exclusive. In *Petaling Tin Bhd v. Lee Kian Chan* [1994] 2 CLJ 346 Edgar Joseph SCJ said at p 361:

> Indeed, even the availability of a prerogative order will not be a sufficient ground for the dismissal of declaratory proceeding. This E was plainly indicated in *Pyx Granite Co v. Ministry of Housing and Local Government* [1960] AC 260. There, Lord Goddard said, obiter (at page 290):
>
> > I know of no authority for saying that if an order or F decision can be attacked by *certiorari* the court is debarred from granting a declaration in an appropriate case. The remedies are not mutually exclusive, though no doubt there are some orders, notably convictions before justices, where the only appropriate remedy is *certiorari*.

G In *Teh Guan Teik v. Inspector General of Police* [1998] 3 CLJ 153 Peh Swee Chin FCJ said at pp 164-165:

> Before us, learned counsel for the Inspector-General of Police persisted with the line of argument based on the ratio of the Court of Appeal in the instant case, ie that the correct procedure H should have been an application for order of *certiorari* as provided under Order 53 of the Rules of High Court 1980 ('the RHC'). No authority was cited by him. Learned counsel for the police sergeant on the other hand, relied on the well known case of *Surinder Singh Kanda v. the Government of the Federation of Malaya* I [1962] MLJ 169, being a Privy Council appeal from the then

Malaya in which Lord Denning held, in an action for declaration that the dismissal of a police inspector was void, and the Privy Council agreed with the view of the High Court in that case that the remedy by way of declaration, was also available to the inspector as well as the remedy by *certiorari*. Lord Denning was delivering the opinion of the Board. Learned counsel for the police sergeant also relied on *Sugumar Balakrishnan v. Chief Minister of State of Sabah & Anor* [1989] 1 MLJ 133 in which it was held that the fact that the remedy of *certiorari* was available to the plaintiff then could not debar him from claiming the remedy of declaration and both were concurrent remedies.

Was the Court of Appeal correct in holding the way it did as stated above, ie, that the procedure by way of declaration was wrong and that the correct way was by way of *certiorari*?

With very great respect, the view of the Court of Appeal is totally against the weight of authorities and established principles.

First and foremost, Order 15 rule 16 of the RHC says:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of rights whether or not consequential relief is or could be claimed.

Order 15 rule 16 is statutory authority for a right to sue by declaration, and as if to exalt such right, it says it shall not be open to objection even if no consequential relief is sought.

On this Order 15 rule 16, Abdoolcader J (as he then was) in *Sungai Wangi Estate v. Uni* [1975] 1 MLJ 136 stated that the rule 'has the widest application ... It does not prescribe any procedure nor is it limited to any specific matter. It applies to all proceedings for declaration ... where no special procedure is laid down, the claim for a declaratory judgment is brought by way of writ.'

Lee Hun Joe CJ (Borneo) in *Datuk Syed Kechik bin Syed Mohamed v. Government of Malaysia & Anor* [1979] 2 MLJ 101 said: 'The prevailing view seems to be that the court's jurisdiction to make a declaratory order is unlimited, subject only to its own discretion.'

A And at pp. 167-168:

> Of course, it was feared that the remedy of declaration would virtually destroy the remedy of certiorari by replacing the latter and this, *inter alia*, led in 1977 to the law reform as embodied in
B O. 53 of the Rules of Supreme Court of England which is different from our own O. 53 of the RHC. Order 53 of England brought ten main changes to the earlier O. 53, according to the White Book of 1979 at p 842; please see the changes set out there. The House of Lord's decision of *O' Reilly v. Mackman*, in interpreting such changes brought about by the law reform has,
C according to the guru of administrative law Prof Wade in *Administrative Law* (6th Ed) at p 678, caused 'great uncertainty' and 'a serious setback for administrative law'. The decision was expressly not followed, for obvious reasons, in our courts, eg, in *Sugumar*'s case and it was also not followed by the Court of Appeal of Singapore. The decision is not relevant to us and need
D not be discussed further, based as it was on the law reform which we have, with all deliberateness, not adopted in our RHC.
>
> I would like to make a general observation before I end this judgment of mine, ie, that a claim for declaration is a very efficient
E remedy for an aggrieved citizen against *ultra vires* actions of all public authorities or governmental bodies. It has no coercive force by itself, *inter alia*, so that no such governmental body need feel the threat of such force. Thus, if a person's rights are affected by an order from such a public authority, he can sue for a declaration of the impropriety of the said order and if he
F succeeds, he can ignore the said order with impunity; see *Dyson v. Attorney General* [1911] 1 KB 410; or if a government servant categorized under art 132 of the Federal Constitution is dismissed from his post, he can claim a declaration that he still holds it. See *Surinder Singh Kanda v. Government of the Federation of Malaya*
G [1962] MLJ 169.

[16] Order 53 was amended in the year 2000 and the material parts of it and Paragraph 1 of the Schedule to the Courts of Judicature Act 1964 read as follows:

H Order 53

Application For Judicial Review

1. (1) This order shall govern all applications seeking the relief specified in Paragraph 1 of the schedule to the Courts
I of Judicature Act 1964 and for the purposes therein specified.

(2) This Order is subject to the provision of Chapter VIII of Part 2 of the Specific Relief Act 1950.

2. (1) An application for any of the reliefs specified in Paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of *habeas corpus*) shall be in Form IIIA.

(2) An application for judicial review may seek any of the said reliefs, including a prayer for a declaration, either jointly or in the alternative in the same application if it relates to or is connected with the same subject matter.

(3) Upon the hearing of an application for judicial review, the Court shall not be confined to the relief claimed by the applicant but may dismiss the application or make any orders, including an order of injunction or monetary compensation:

Provided always that the power to grant an injunction shall be exercised in accordance with the provisions of section 29 of the Government Proceedings Act 1948 and section 54 of the Specific Relief Act 1950.

(4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application.

Paragraph 1 of the Schedule to the Courts of the Judicature Act 1964

1. Prerogative writs

Power to issue to any person or authority directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by part II of the Constitution, or any of them, or for any purpose.

[17] The new O. 53 is similar to O. 53 of the English Rules of the Supreme Court as amended in 1977 the material parts of which read as follows:

Applications For Judicial Review

Cases appropriate for application for judicial review (O. 53 r. 1)

1. (1) An application for:

(a) an order of *mandamus*, prohibition or *certiorari*, or

(b) an injunction under section 9 or the Administration of Justice (Miscellaneous Provisions) Act 1938 restraining a person from acting in any office in which he is not entitled to act,

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1) (b)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to:

(a) the nature of the matters in respect of which relief may be granted by way of an order of *mandamus*, prohibition or *certiorari*,

(b) the nature of the persons and bodies against whom Relief may be granted by way of such an order, and

(c) all the circumstances of the case,

It would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Joinder of claims for relief (O. 53 r. 2)

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

[18] In *O'Reilly v. Mackman* [1982] 2 All ER 1124 the House of Lords held that, as a general rule, it is contrary to public policy and as such an abuse of process for a person seeking to establish that a decision or action of a person or body infringes rights which are entitled to protection under public law, to proceed by way of an ordinary claim rather than the judicial review procedure under O. 53, thereby evading the provision intended to protect

public authorities. It must, however, be observed that this rule is not absolute. As Lord Diplock himself said in his judgment at p 1134:

> The position of applicants for judicial review has been drastically ameliorated by the new O. 53. It has removed all those disadvantages, particularly in relation to discovery, that were manifestly unfair to them and had, in many cases, made applications for prerogative orders an inadequate remedy if justice was to be done. This it was that justified the courts in not treating as an abuse of their powers resort to an alternative procedure by way of action for a declaration or injunction (not then obtainable on an application under O. 53), despite the fact that this procedure had the effect of depriving the defendants of the protection to statutory tribunals and public authorities for which for public policy reasons O. 53 provided.
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> Now that those disadvantages to applicants have been removed and all remedies for infringements of rights protected by public law can be obtained on an application for judicial review, as can also remedies for infringements of rights under private law if such infringements should also be involved, it would in my view as a general rule be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of O. 53 for the protection of such authorities.
>
> My Lords, I have described this as a general rule; for, though it may normally be appropriate to apply it by the summary process of striking out the action, there may be exceptions, particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law, or where none of the parties objects to the adoption of the procedure by writ or originating summons. Whether there should be other exceptions should, in my view, at this stage in the development of procedural public law, be left to be decided on a case to case basis a process that your Lordships will be continuing in the next case in which judgment is to be delivered today (see *Cocks v. Thanet DC* [1982] 3 All ER 1135).

In *Steed v. Secretary of State for the Home Departure* [2000] 3 All ER 226 Lord Slynn of Hadley said at pp 230-232:

A The second question is whether the citizen who has given in his gun can challenge in the court what he considers unreasonable delay in the consideration of his claim or the failure to pay in due time. It is again to my mind plain that he must be able to bring such a challenge by one means or another. The Home Office B contends that this can only be done by judicial review, at any rate until all the scheme's procedures have been gone through and his entitlement and the value decided by the FCS. At that stage if the agreed sum due is not paid a claim by summons is possible. Before that stage is reached it is an abuse of process to raise the matter by such a summons.

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The starting point for this contention is *O'Reilly v. Mackman* [1982] 3 All ER 1124, [1983] 2 AC 237 and in particular the passage in the speech of Lord Diplock:

> ... it would in my view as a general rule be contrary to D public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the E provisions of O. 53 for the protection of such authorities. (See [1982] 3 All ER 1124 at 1134, [1983] 2 AC 237 at 285.)

That case as followed in *Cocks v. Thanet DC* [1982] 2 AC 286 attached particular importance to the protection given to public F authorities by RSC O. 53 to the extent that leave to bring proceedings was required and a time limit imposed subject to good reason for extending it.

O'Reilly's case has had an important influence on the regulation of court proceedings where an individual seeks to assert his rights G against a public authority. But even in the passage cited, Lord Diplock sets out the position 'as a general rule'. Earlier in his speech, he said that Parliament and the Rules Committee had been:

> ... content to rely on the express and the inherent power H of the High Court, exercised on a case to case basis, to prevent abuse of its process whatever might be the form taken by that abuse. Accordingly, I do not think that your Lordships would be wise to use this as an occasion to lay down categories of cases in which it would necessarily I always be an abuse to seek in an action begun by writ or

> originating summons a remedy against infringement of rights of the individual that are entitled to protection in public law.' (See [1982] 3 All ER 1124 at 1134, [1983] 2 AC 237 at 285.)

He accepted further, that although striking out may be appropriate 'normally':

> ... there may be exceptions, particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law, or where none of the parties objects to the adoption of the procedure by writ or originating summons. (See [1982] 3 All ER 1124 at 1134, [1983] 2 AC 237 at 285.)

Other exceptions, if any, should be decided on a case to case basis. One such exception is to be found in *Roy v. Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 All ER 705, [1992] 1 AC 624 when it was accepted that a claim for private rights could be made by action even if that involved a challenge to a 'public law act or decision'. Another is to be found in *Mercury Communications Ltd v. Director General of Telecommunications* [1996] 1 All ER 575 at 581, [1996] 1 WLR 48 at 57 when in a speech with which other members of the House of Lords agreed, I said:

> The recognition of Lord Diplock that exceptions exist to the general rule may introduce some uncertainty, but it is a small price to pay to avoid the over-rigid demarcation between procedures reminiscent of earlier disputes as to the forms of action, and of disputes as to the competence of jurisdictions apparently encountered in civil law countries where a distinction between public and private law has been recognised ... The experience of other countries seems to show that the working out of this distinction is not always an easy matter. In the absence of a single procedure allowing all remedies – quashing, injunctive and declaratory relief, damages – some flexibility as to the use of different procedures is necessary. It has to be borne in mind that the overriding question is whether the proceedings constitute an abuse of the process of the court.

In *Trustees of the Dennis Rye Pension Fund v. Sheffield City Council* [1997] All ER 747 at 755, [1998] 1 WLR 840 at 849 Lord Woolf MR said that the guidelines he gave involved:

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> ... not only considering the technical questions of the distinctions between public and private rights and bodies but also looking at the practical consequences of the choice of procedure which has been made. If the choice has no significant disadvantages for the parties, the public or the court, then it should not normally be regarded as constituting an abuse.

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In the present case, if there had been eg a general challenge to the vires of the scheme – a question as to whether it complies with the statutory intention – it would no doubt be right to begin by an application for judicial review. But here essentially this claimant says that money was due to him; it was not paid when it was due; he has accordingly suffered damage (valued in terms of interest) because of the delay. I do not see that any of the questions which might arise here cannot be dealt with by a judge on the hearing of the summons or that answering such questions usurps the province of the administration where a discretionary decision is reserved to the administration. Here there are largely either objective questions of fact as to whether the gun is a listed gun and whether the procedures have been completed or they depend on valuation on which evidence can be given and a decision arrived at by a judge.

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As a matter of procedure it seems to me that it was more convenient to begin by summons and to deal with a particular claim (and if a real question of law arose to appeal) than by application for judicial review, perhaps followed by an appeal.

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[19] Reference may also be made to *Civil Procedure 2008,* vol 5 where it says at p 1532:

The precise scope of the rule in *O'Reilly v. Mackman* is still a matter of debate. Two main approaches have been canvassed in the case law. One approach is that the rule does not apply to claims which are brought to vindicate private law rights even though they involve a challenge to a public law decision or action and may involve determining questions of public law. If this approach is adopted, then the aggrieved person will only be forced to proceed by way of a claim for judicial review where private law rights are not at stake, that is in a case which only raises issues of public law. The alternative approach is that the rule in *O'Reilly v. Mackman* applies to all case where the claim involves a challenge to a public law decision or action or involves determining question of public law (subject to certain limited exceptions) whether or not the ultimate aim of the proceedings is to vindicate a private law right. In *Roy v. Kensington and Chelsea*

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and Westminster Family Practitioner Committee [1992] 1 AC 624, the House of Lords left open the question of which of these approaches should be adopted but indicated a preference for the first approach. There, the House held that a claim by a general medical practitioner that the Family Practitioner Committee had acted unlawfully in deciding to reduce the amount that he was paid by way of a practice allowance under the NHS regulations was a claim that could be litigated by way of an ordinary claim notwithstanding the fact that the claim involved a challenge to a public law decision said to be unlawful on public grounds. The claimant had not therefore abused the process of the court by not making an application for judicial review and his claim would not be struck out. The House of Lords said that, even assuming that the rule in *O'Reilly v. Mackman* generally required all challenges to public law decisions or actions to be brought by way of judicial review, subject to certain exceptions, this case was either not within the rule or was excepted from it because the claimant's claim was based either on a contractual or statutory private law right to be paid his remuneration in accordance with his terms of service. Accordingly, private law rights dominated the proceedings and the order sought (payment of the full amount of the practice allowance) was one which could not be made in judicial review proceedings. In *Mercury Ltd v. Telecommunications Director* [1996] 1 WLR 48, The House of Lords said that it was important to retain flexibility, that the precise limits of what is called private law and public law are by no means worked out, and that private law proceedings should only be struck out if they are an abuse of the process of the court. For further discussion, see also *Gillick v. West Norfolk & Wisbech Area Health Authority* [1986] AC 112 and *Trustees of Dennis Rye Pension Fund v. Sheffield City Council* [1998] 1 WLR 1629. See generally Ch.3 in *Lewis, Judicial Remedies in Public Law*.

[20] The rule in *O'Reilly v. Mackman* [1982] 3 All ER 1124 has been adopted by the Court of Appeal in cases such as *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2002] 2 CLJ 697, *Dato Seri Anwar bin Ibrahim v. Perdana Menteri Malaysia & Anor* [2007] 3 CLJ 377 and *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 6 CLJ 473. However, due to the uncertainties in the rule in *O'Reilly v. Mackman* [1982] 3 All ER 1124 in England itself the adoption of the rule in that case locally must be done so with care and caution as in *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2002] 2 CLJ 697. The result is that the remedies of declaratory relief under O. 15 r. 16 and *certiorari* must still be regarded generally as being alternatives and mutually not exclusive.

[21] However, whatever restriction there may be on the use of O. 15 r. 16 it will not apply where a person seeks to assert, *inter alia*, his right to a legal status. This is statutorily recognised in the form of s. 41 which reads as follows:

> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintif need not in that suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

In explaining the words "… legal character …" as appearing in s. 41 the *Indian Contract and Specific Relief Act* by Polloct & Mulla 10th edn, says at p 1065:

> Legal character or any right to any property are species of the same genus, *viz* 'legal status'. 'Legal character' however does not appear to be a phrase common to jurisprudence nor does it appear to be used in statutes except s. 42 of Specific Relief Act (s. 34 of the new Act) and s. 41 of the Indian Evidence Act. But what was intended to be meant was 'legal status'. A man's 'legal character' is the same thing as his status which is constituted by the attributes the law ascribes to him in his individual and personal capacity.

Sarkar's Specific Relief Act 13th edn, says at p 316:

> Legal character means the same thing as status (*Kali Kishen v. Golam*, 13 Cal 3) and includes characteristics which the law attaches to a man in his personal and individual capacity, eg divorce, marriage, adoption, legitimacy (*Next Jehan v. Eugene*, AIR [1942] Cal 35).
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> It has, however, been held that the words 'legal character' are wide enough to include the right of franchise and the right of being elected a municipal councillor (*Satnarain v. Hanumanprasad* AIR [1946] Lah 85), or the right to remain in service against an illegal order of dismissal (*State of Bihar v. Abdul Majid* [1954] SCR 786.

[22] In *The Attorney General of Hong Kong v. Zauyah Wan Chik & 3 Ors & Another Appeal* [1995] 3 CLJ 35 Gopal Sri Ram JCA (as he then was) in commenting on the jurisdiction of the court to grant declaratory relief under s. 41 said at pp 49-50: A

> Now, the jurisdiction of a Malaysian court to grant declaratory relief springs from two sources. First there is the statutory basis to be found in s. 41 of the Specific Relief Act 1950 which reads as follows: B
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> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief: C
>
> Provided that no court shall make any such a declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so. D
>
> Explanation – A trustee of property is a 'person interested to deny' a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee. E
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> The procedural adjunct to the statutory basis is to be found in O. 15 r. 16 of the Rules of the High Court 1980, which provides as follows:
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> > No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed. F
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> The alternative basis for the grant of declaratory relief – a jurisdiction of great antiquity – is the inherent jurisdiction of the court: *Kuluwante (An infant) v. Government of Malaysia & Anor* [1978] 1 MLJ 92. It has long been recognized by Indian courts administering their Specific Relief Act 1877 (later revised and re-enacted in 1963) that s. 42 of that enactment, which is identical to s. 41 of our statute is not a complete code upon the subject of declaratory decrees. G H
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> In *Supreme General Films Exchange Ltd v. Brijnath Singhji* AIR [1975] SC 1810, Beg J explained the scope of the declaratory jurisdiction in these words: I

A *Kishori Lal*'s case AIR [1952] Punj 387 was cited to show that declaratory decrees falling outside s. 42 of the Specific Relief Act are not permissible because s. 42, Specific Relief Act is exhaustive on this subject. This view must be held to have been rejected by this court when it declared in *Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy* [1966] Supp SCR 270 at p 277; AIR [1967] SC 436 at p 440:

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> In our opinion, s. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of s. 42 of the Specific Relief Act.

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D The result is that s. 42 merely gives statutory recognition to a well-recognized type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of courts to give declarations of right in appropriate cases falling outside s. 42.

E We think that the circumstances in which a declaratory decree under s. 42 should be awarded is a matter of discretion depending upon the facts of each case. No doubt a complete stranger whose interest is not affected by another's legal character or who has no interest in another's property could not get a declaration under s. 42, Specific Relief Act with reference to the legal character or the property involved.

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The Federal Court in *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177 cited and applied the decision of the Indian Supreme Court in Supreme General Films Exchange Ltd and in other Indian cases. The relevant passage reads as follows (at p 178):

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> It will be necessary at the outset to consider the scope of the power to grant declaratory orders and judgments. Chapter VI of the Specific Relief Act 1950 deals with declaratory decrees and s. 41 thereof provides for the discretion of the court as to declarations of status or right. Section 41 of the Specific Relief Act was textually adopted *totidem verbis* from s. 42 of the Indian Specific Relief Act and Civil Procedure Code, s. 41 of the Specific Relief Act 1877 (now s. 34 of the Indian Specific Relief Act 1963), and on an application of the law enunciated by the Privy Council and the Supreme Court of India in relation to the

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> equivalent provisions in the Indian Specific Relief Act and Civil Procedure Code, s. 41 of the Specific Relief Act gives statutory recognition to a well-recognized type of declaratory relief and subjects it to a limitation but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of the courts to give declarations of right in appropriate cases falling outside it. The court has power to grant such a decree independently of the requirements of the section, and such a declaration outside the purview of this statutory enactment will be governed by the general provisions of O. 15 r. 16 of the Rules of the High Court 1980 which will then apply (*Supreme General Films Exchange Ltd v. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar & Ors*, following *Vemareddi Ramaraghava Reddy & Ors v. Konduru Seshu Reddy & Ors* relying on the decisions of the Privy Council in *Fischer v. Secretary of State for India in Council* [1899] 26 IA 16 and *Partab Singh v. Bhabuti Singh* [1913] 40 IA 182).
>
> While I cannot possibly agree to the reference to O. 15 r. 16 as providing a jurisdictional basis (see *Government of Malaysia v. Lim Kit Siang* [1998] 2 MLJ 12), I respectfully agree with the proposition that s. 42 is not exhaustive and does not constitute the sole jurisdictional basis for the grant of declaratory relief.

[23] Clearly the challenge of the applicants to their suspension from the Legislative Assembly is a matter that affects their legal status within the meaning of s. 41. They are therefore entitled to seek a declaration of their legal right pursuant to O. 15 r. 16. It cannot be argued that they ought to have proceeded under O. 53 itself for declaratory relief for two reasons. Firstly, O. 53 does not say it is the exclusive provision for the grant of declaratory relief as stated by Lord Diplock in *O'Reilly v. Mackman* [1982] 3 All ER 1124 at p 1134 in the following words:

> My Lords, O. 53 does not expressly provide that procedure by application for judicial review shall be the exclusive procedure available by which the remedy of a declaration or injunction may be obtained for infringement of rights that are entitled to protection under public law; nor does s. 31 of the Supreme Court Act 1981. There is great variation between individual cases that fall within O. 53 and the Rules of Committee and subsequently the legislature were, I think, for this reason content to rely on the express and the inherent power of the High Court, exercised on a case to case basis, to prevent abuse of its process whatever might be the form taken by that abuse. Accordingly, I do not

A think that your Lordships would be wise to use this as an occasion to lay down categories of cases in which it would necessarily always be an abuse to seek in an action begun by writ or originating summons a remedy against infringement of rights of the individual that are entitled to protection in public law.

B Secondly, when the Specific Relief Act 1950 was enacted O. 53 was not in existence and, thus, adherence to it could not have been contemplated.

[24] Be that as it may, and in any event, in cases of this nature C the most appropriate form of relief is by way of declaration. In support reference is made to *The Declaratory Judgment,* 2nd edn by Lord Woolf where it says at p 90:

> The courts are, and should be, acutely sensitive not to impinge on the jurisdiction and sovereignty of Parliament. In litigation close D to the sometimes indistinct boundary between the respective jurisdictions of the courts and Parliament, the declaratory power of the courts is particularly important since a declaration will often be the only remedy they will be willing or able to grant (*R v. H.M Treasury, ex p Smedley* [1985] QB 657 at 672 and *R v.* E *Boundary Commission, ex p Foot* [1983] 1 QB 600 at 634. Prerogative remedies and injunctions are unsuitable, and almost certainly unavailable, to control parliamentary proceedings (*R v. Hastings Local Board of Health* [1865] 6 B & S 401 distinguished in *R v. Electricity Commissioners* [1924] 1 KB 171 at 209 and pp 465 *et seq.*; Wade: *Administrative Law* (6th ed 1988), pp 590-591, F 645; de Smith: *Judicial Review of Administrative Action* (4th ed 1980) pp 387, 395. *Merricks v. Healthcrat-Amoroy* [1955] Ch 567; *Harpar v. The Home Secretary* [1955] Ch 238; *R v. Department of Transport (Nos 1 and 2), ex p Factortane* [1990] 2 AC 85). Such jurisdiction as the Courts have to grant declaratory relief in G relation to Parliament is especially constrained in two areas, the first relating to parliamentary privilege, and the second to parliamentary legislation and resolutions.

Accordingly, we dismissed the objection raised and proceeded to hear the motion. H

[25] As we answered only the first two questions this part of the judgment shall be confined only to an analysis of the law relating to them. In answering the questions it must be remembered that the alleged contempts committed by the applicants resulting in I their suspension did not arise within the walls of the Legislative Assembly but outside it. This is obvious as the charge against

them is for, *inter alia*, wrongly holding themselves out as Menteri Besar and Executive Council Members respectively. Thus the critical issue for deliberation is whether provision has been made for such contempts as envisaged by the two questions.

[26] The submission of learned counsel for the respondent is that the issues raised by the applicants are not justiciable and, in support, relied on art. 72(1) of the Federal Constitution ("art. 72(1)") and the Legislative Assembly (Privileges) Enactment 1959 of Perak. In further elaboration he referred to cases such as *Tun Datu Hj Mustapha bin Datu Harun v. Legislative Assembly of the State of Sabah* [1986] 2 MLJ 388, *Bradlaugh v. Gossett* [1884] 12 QBD 271, *British Railway Board v. Pickin* [1974] AC 765, *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 2 MLJ 85, *Fan Yew Teng v. Government of Malaysia* [1976] 2 MLJ 262 and *Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors* [1986] 2 CLJ 209; [1986] CLJ (Rep) 142. He also relied on Standing Orders 89 and 90 of the Standing Orders of the State Legislative Assembly of Perak to argue that it was up to the Speaker to decide on matters of privilege and that the Speaker has a general power to do anything including the power of suspension. In his submission the Honourable Attorney General said that no rules have been made pursuant to Article XLIV of the Perak Constitution in respect of contempt and the punishment for it. In contending that such rules are necessary he referred to *Kielley v. Carson* [1841-1842] 4 Moore 63, *Fenton v. Hampton* [1858] 11 Moore 347 and *Doyle v. Falconer* [1865-67] LR 1 PC 328. He added that these cases were held to be inapplicable in Singapore in the case of *JB Jeyaratnam v. Attorney General of Singapore* [1989] 1 MLJ 137 as their Parliament (Privileges, Immunities and Powers) Act 1985 expressly confers such powers. On the issue of justiciability he said that the courts have the power to adjudicate on matters of the Legislative Assembly when they exceed the constitutional powers vested in them. In support he referred to *Tun Datuk Haji Mohamed Adnan Robert v. Tun Datu Haji Mustapha bin Datu Harun* [1987] 1 MLJ 471, *Lim Kit Siang v. Dato Seri Dr Mahathir Mohamad* [1987] 1 MLJ 383, *Ah Thian v. Government of Malaysia* [1976] 2 MLJ 112, *The Speaker of the National Assembly v. De Lille MP and Anor* [1999] ZASCA 50, *Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors* SCC 3 [2007] 184. Learned counsel for the applicants adopted the submission of the Honourable Attorney-General.

[27] It is perhaps necessary to resolve the question of justiciability of the orders sought by the applicants before proceeding any further. This is governed by art. 72(1). It reads as follows:

> The validity of any proceedings in the Legislative Assembly of any state shall not be questioned in any court.

The operative words in the provision are "… proceedings in the Legislative Assembly …" In considering the meaning of the expression "proceedings in Parliament" *Parliamentary Practice* 20th edn, by Erskine May says at p 92:

> The primary meaning, as a technical parliamentary term, of 'proceedings' (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision.
>
> An individual Member takes part in a proceeding usually by speech, but also by various recognized kinds of formal action, such as voting, giving notice of a motion, etc., or presenting a petition or a report from a Committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers also can take part in the proceedings of a House, eg, by giving evidence before it or before one of its committees, or by securing the presentation of their petitions.
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> While taking part in the proceedings of a House, members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.

[28] In determining the scope of art. 72(1) it must be remembered that in Malaysia the constitution is supreme. As Suffian LP said in *Ah Thian v. Government of Malaysia* [1976] 2 MLJ 112 at p. 113:

> The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of state legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

In *Lim Kit Siang v. Dato Seri Dr Mahathir Mohamed* [1987] 1 MLJ 383 Salleh Abas LP said at p. 386: A

> When we speak of government it must be remembered that this comprises three branches, namely, the legislature, the executive and the judiciary. The courts have a constitutional function to perform and they are the guardian of the Constitution within the terms and structure of the Constitution itself; they not only have the power of construction and interpretation of legislative but also the power of judicial review – a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of judges over legislators but the Constitution over both. The courts are the final arbiter between the individual and the state and between individuals *inter se*, and in performing their constitutional role they must of necessity and strictly in accordance with the constitution and the law be the ultimate bulwark against unconstitutional legislation or excesses in administrative action. B C D

In *Tun Datuk Haji Mohamed Adnan Robert v. Tun Datu Haji Mustapha bin Datu Harun* [1987] 1 MLJ 471 Abdul Hamid CJ (Malaya) (as he then was) said at p. 485: E

> The mere fact that a litigant seeks the protection of a political right does not mean that it presents a political question. Whether a matter raises a political question; whether it has been committed by the Constitution to another branch of government is itself a matter for judicial determination because the Constitution has made the Courts the ultimate interpreter of the Constitution. The Courts accordingly cannot reject a *bona fide* controversy as to whether some action denominated 'political' exceeds constitutional authority. F

In the High Court in that case Tan Chiaw Thong J said (with which the Supreme Court agreed) at p. 475: G

> The first authority is the case of *Fan Yew Teng v. Government of Malaysia* [1976] 2 MLJ 262 and it was contended on that authority, that once a LA has dealt with a matter, in this case the matter of the appointment of the Chief Minister and who in that capacity commands the confidence of the majority of members, the Court should not interfere directly or indirectly, in the same matter. With respect, as a proposition, this in my view is obviously too wide, as the authority of the LA must necessarily be confined to matters within its constitutional and legal powers and functions. H I

Hidayatullah CJ in writing for the Indian Supreme Court in *Cooper v. Union of India* AIR [1970] SC 1318 said at p. 1320:

> Further the supremacy of a legislature under a written constitution is only within what is in its power but what is within its power and what is not, when any specific act is challenged, it is for the Courts to say.

In *Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors,* SCC 3 [2007] 184 YK Sabharwal CJ said at para 57:

> In view of the above clear enunciation of law by Constitutional Benches of this Court in case after case, there ought not be any doubt left that whenever Parliament, or for that matter any State Legislature, claims any power or privilege in terms of the provisions contained in Article 105(3), or Article 194(3) as the case may be, it is the court which has the authority and the jurisdiction to examine, on grievance being brought before it, to find out if the particular power or privilege that has been claimed or asserted by the legislative is one that was contemplated by the said constitutional provisions …

In the same case it was also held at para 389 (u) that an ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity.

Finally, in the *The Speaker of the National Assembly v. De Lille MP & Anor* ZASCA 50 the Supreme Court of Appeal of South Africa held that the suspension of the respondent for uttering certain words in the National Assembly was void. Mahomed CJ in writing for the court said:

> This enquiry must crucially rest on the Constitution of the Republic of South Africa. It is Supreme – not Parliament. It is the ultimate source of all lawful authority in the country. No Parliament, however *bona fide* or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the Constitution. Section 2 of the Constitution expressly provides that law or conduct inconsistent with the Constitution is invalid and the obligations imposed by it must be fulfilled. It follows that any citizen adversely affected by any decree, order or action of any

official or body, which is not properly authorised by the Constitution is entitled to the protection of the Courts. No Parliament, no official and no institution is immune from Judicial scrutiny in such circumstances.

...

But it does not follow from this that the Assembly necessarily had the Constitutional authority to suspend the respondent from its proceedings in the circumstances which it resolved to do. It is clear that the respondent was not suspended because her behaviour was obstructing or disrupting or unreasonably impeding the management of orderly business within the Assembly, but as some kind of punishment for making a speech in the Assembly some days earlier which did not obstruct or disrupt the proceedings in the Assembly at the time, but was nevertheless considered objectionable and unjustified by others including the majority of members of the *ad hoc* committee and the Assembly. As was explained by the Privy Council in *Kielley v. Carson* [1842] 13 ER 225 the former kind of suspension is a necessary protective measure, the latter not. The question therefore that needs to be determined is not whether the Assembly or the appellant had lawful authority to suspend the respondent from the Assembly as an orderly measure to protect proceedings of the Assembly from obstruction or disruption, but whether or not it had the authority to do so as a punishment or disciplinary measure for making a speech which was not in any way obstructive or disruptive of proceedings in the Assembly, but which was nevertheless open to justifiable objection. That question cannot properly be answered by interpreting the ambit of section 57(1)(a) of the Constitution in isolation, but by reading it together with other relevant provisions including section 58.

Section 58(1) provides that Cabinet members and members of the National Assembly have freedom of speech in the Assembly and its committees, subject to its rules and orders. Section 58(1)(b)(i) goes on to provide that such members are not liable to civil or criminal proceedings, arrest or imprisonment or damages "for anything they have said in, produced before or submitted to the Assembly or any of its committees". Section 58(2) states that "[o]ther privileges and immunities of the National Assembly ... may be prescribed by national legislation.

A It follows that art. 72(1) must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the B applicants are therefore justiciable.

[29] It now becomes necessary to ascertain whether there was any power to authorise the suspension of the applicants on account of the alleged contempt committed by them. As a starting C point it is useful to refer to *Doyle v. Falconer* LR 1 PC 328 where Colvile J said:

> The privileges of the House of Commons, that of punishing for contempt being one, belong to it by virtue of the *lex et consuetuds Parliamenti*, which is a law peculiar to and inherent in the two D Houses of Parliament of the United Kingdom. It cannot, therefore, be inferred from the possession of certain powers by the House of Commons, by virtue of that ancient usage prescription, that the like powers belong to Legislative Assemblies of comparatively recent creation in the dependencies of the Crown. E The question, therefore, is reduced to this: Is the power to punish and commit for contempts committed in its presence are necessary to the existence of such a body as the Assembly of Dominica, and the proper exercise of the functions which it is intended to execute? It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove F any obstruction offered to the deliberaties or proper action of a legislative body during its sitting, which last power is necessary for self-preservation. If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even G expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another.

Thus it has been held in *Kielley v. Carson 4 Moore's* PC Cases 63 H that the Legislative Assemblies in the British Colonies have, in the absence of express grant, no power to adjudicate upon, or punish, contempts committed beyond their walls.

I

[30] It is thus manifestly patent that there must be specific legal authority to take cognizance of and punish for contempt. This is particularly significant where the alleged contempt was committed beyond the walls of the Legislative Assembly. The need for such authority is recognised in Article XLIV of the Perak Constitution which reads as follows:

> (1) Subject to the provisions of the Federal Constitution and this Constitution, the Legislative Assembly shall regulate its own procedure and may, from time to time, make, amend and revoke standing Rules and Orders for the regulation and orderly conduct of its own proceedings and the conduct of business.

The Standing Orders of the State Legislative Assembly of Perak was passed in 1988. The relevant Orders are Standing Orders 44, 89 and 90. They read as follows:

> Standing Order 44
>
> (1) The Chair, after having called the attention of the Assembly, or of the Committee, to the conduct of a member who persists in irrelevance, or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech,
>
> (2) The Chair shall order any member whose conduct is grossly disorderly to withdraw immediately from the Assembly during the remainder of that day's sitting, and the Bentara Dewan shall act on such orders as he may receive from the Chair in pursuance of this Standing Order; but if, on any occasion, the Chair deems that the powers under the previous provisions of this Standing Order are inadequate, he may name such member or members, in which event the same procedure shall be followed as is prescribed in paragraph (3), (4), (5) and (6).
>
> (3) Whenever a member has been named by the Chair immediately after the commission of the offence of disregarding the authority of the Chair, or of persistently and wilfully obstructing the business of the Assembly by abusing the rules of the Assembly, or otherwise, then, if the offence has been committed by such member in the Assembly, a motion shall forthwith be proposed by the Menteri Besar or any member of the State Executive Council and seconded by another member present, "That Mr. ... be suspended from the service of the Assembly", and Mr. Speaker shall forthwith put the question on that motion, no amendment, adjournment or debate being allowed; and, if the offence has been committed in Committee of the whole

A Assembly, the Chairman shall forthwith suspend the proceedings of the Committee and report the circumstances to the Assembly; and Mr. Speaker shall on a motion being made forthwith put the same question, no amendment, adjournment or debate being allowed, as if the offence had been committed in the Assembly itself.

B

(4) Not more that one member shall be named at the same time, unless two or more members together have jointly disregarded the authority of the Chair.

C (5) If a member is suspended under the provisions of this Standing Order, he shall be directed by Mr. Speaker to withdraw, and his suspension shall last until the end of the meetings.

(6) If a member, or two or more members acting jointly who have been suspended under this Standing Order from the service of the Assembly, shall refuse to obey the direction of Mr. Speaker to withdraw, when severally summoned under Mr. Speaker's orders by the Bentara Dewan to obey such direction, Mr. Speaker shall call the attention of the Assembly to the fact that recourse to force is necessary in order to compel obedience to his direction. When the member or members named by him as having refused to obey his direction have been removed from the Assembly they shall thereupon without any further question being put be suspended from the service of the Assembly during the remainder of the session.

D

E

F (7) Members who are ordered to withdraw under paragraph (2) or who are suspended from the service of the Assembly under paragraphs (3) and (6) shall forthwith withdraw from the precincts of the Assembly and shall be excluded therefrom for the remainder of the sitting or for the period of their suspension, as the case may be.

G

(8) In the case of grave disorder arising in the Assembly, Mr. Speaker may, if he thinks it necessary so to do, adjourn the Assembly without putting any question, or suspend the sitting for a time to be fixed by him; and in the case of grave disorder arising in Committee of the whole Assembly, the Chairman may suspend the proceedings of the Committee and report the circumstances to the Assembly, and Mr. Speaker may thereupon take action as though the disorder has arisen in the Assembly.

H

(9) Nothing in this Standing Order shall be taken to deprive the Assembly of the power of proceeding against any member according to any resolution of the Assembly.

I

Standing Order 89

The decision of Mr. Speaker upon any point of interpretation of any of these Standing Orders, or upon any matter of practice, shall subject to a substantive motion moved for that purpose, be final, and Mr. Speaker may from time to time issue rulings thereon.

Standing Order 90

All matters not specifically provided in these Standing Orders and all questions relating to the detailed working of these Standing Orders shall be regulated in such manner, not inconsistent with these Standing Orders, as Mr. Speaker may from time to time direct; and in giving any such direction Mr. Speaker shall have regard to the usages of Commonwealth Parliamentary practice so far as such usages can be applied to the proceedings of the Assembly.

[31] Standing Order 44 deals with disorderly conduct arising in the Assembly only. Standing Order 89 deals with the powers of interpretation by the Speaker of any of the Standing Orders. Standing Order 90 gives the Speaker power to regulate matters not specifically provided for in the Standing Orders and in doing so he shall have regard to the usages of Commonwealth Parliamentary practice so far as such usages can be applied to the proceedings of the Assembly subject to the requirement that they must not be inconsistent with the Standing Orders. As far as the application of Commonwealth Parliamentary practices in such matters are concerned what can be adopted are only their "usages" which is defined in *Black's Law Dictionary* 6th edn as:

A reasonable and lawful public custom in a locality concerning particular transactions which is either known to the parties, or so well established, general, and uniform that they must be presumed to have acted with reference thereto. Practice in fact. *Electrical Research Products v. Gross*, CCA Alaska, 120F 2d 301, 305. Uniform practice or course of conduct followed in certain lines of business or professions or some procedure or phase thereof. *Turner v. Donovan*, 3 Cal App 2d 485, 39 P 2d 858, 859. Usage cannot be proved by isolated instances, but must be certain, uniform and notorious.

As *Parliamentary Practice*, 20th edn, by Erskine May says at p. 72:

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute.

A However, as far as the law of contempt is concerned *Kielley v. Carson* 4 Moores PC Cases 63 and *Doyle v. Falconer* LR 1 PC 328 make it clear that in the Commonwealth countries there must be specific statutory provision to have jurisdiction to deal with it. With regard to the adoption of the power to deal with contempt
B of the House of Commons, *Members of Parliament: Law and Ethics* by Gerard Carney says at p. 168:

> The only certain basis for the incorporation of all the privileges of the House of Common in colonial legislatures was by their
C wholesale adoption by statute.

This is reflected in s. 3 of the Singapore Parliament (Privileges, Immunities and Powers) Act 1985 as demonstrated in *JB Jeyaratnam v. Attorney General of Singapore* [1989] 1 MLJ 137. The section reads as follows:

D

> 3(1) The powers, privileges and immunities of Parliament and of the Speaker, Members and Committees of Parliament shall be the same as those of the Commons House of Parliament of the United Kingdom and of its Speaker, Members or Committees at
E the establishment of the Republic of Singapore.
>
> (2) Such privileges, immunities and powers shall for all purposes be construed and have effect as if such privileges, immunities and powers were prescribed by this Act, and it shall not be necessary in any proceedings to plead the same but the same shall be
F judicially noticed in all the courts.
>
> (3) ...

Thus the power to deal with contempts, not specifically provided for in the Standing Orders, is not something that the Speaker can
G take cognizance of under Standing Order 90 as it requires a law to that effect.

[32] Be that as it may, the summonses which were issued to the applicants were done so pursuant to Standing Order 72. It reads
H as follows:

> (1) There shall be a Committee to be known as the Committee of Privileges to consist of Mr. Speaker as Chairman and six members to be appointed by the Assembly as soon as may be after the beginning of each session. There shall be referred to this
I Committee any matter which appears to affect the powers and privileges of the Assembly. It shall be the duty of the Committee to consider any such matters to them referred, and to report on them to Assembly.

(2) When the Assembly is not sitting a member may bring an alleged breach of privilege to the notice of Mr. Speaker who may, if he is satisfied that a *prima facie* breach of privilege has been committed, refer such matter to the Committee, which shall report thereon to the Assembly.

(3) The Committee shall have power to send for persons, papers and documents, and to report from time to time.

Standing Order 72(1) authorises the Committee of Privileges to take cognizance of "... any matter which appears to affect the powers and privileges of the Assembly ..." In order for a "... matter ..." to have such an effect it must be unlawful or be an infringement of the powers and privileges of the Assembly. It is only then that it can be said that it appears to affect the powers and privileges of the Assembly. The summonses against the Applicants state that their acts constitute contempt. As contempt has not been specifically prescribed for, the acts cannot come within the ambit of Standing Order 72(1). Even the Legislative Assembly (Privileges) Enactment 1959 enacted by the Perak legislative Assembly does not contain any provision for the offence of contempt and its punishment. By way of contrast reference must be made to the House of Parliament (Privileges and Powers) Act 1952 which makes specific provision for contempt.

[33] The corollary is that Article XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and the Legislative Assembly (Privileges) Enactment 1959 do not provide for the offence of contempt and the resultant punishment of suspension from attending sessions of the State Legislative Assembly.

[34] In the upshot the suspension of the applicants on account of the alleged contempt committed by them is null and void. Accordingly we answered Questions (i) and (ii) in the affirmative. We did not find it necessary to answer the other questions. It was also our view that the answer to the two questions is sufficient to make a final determination in the case. We therefore granted order in terms of prayers (a) (1) and (4) in the originating summons. We made no order as to costs.